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7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

12 **MORGAN KEELY DUFFNER**

13 Respondent.

Case No. 2013-404

14 **STATEMENT OF ISSUES**

15 Complainant alleges:

16 **PARTIES**

17 1. Louise R. Bailey, M.Ed., R.N. (Complainant) brings this Statement of Issues solely in
18 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
19 Consumer Affairs.

20 2. On or about December 9, 2011, the Board of Registered Nursing (Board) received an
21 application for a Registered Nurse license from Morgan Keely Duffner (Respondent). On or
22 about December 7, 2011, Respondent had certified under penalty of perjury to the truthfulness of
23 all statements, answers, and representations in the application. The Board denied the application
24 on April 10, 2012.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

STATUTES

4. Section 480 authorizes boards to deny license applications in certain circumstances:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

5. Section 2736 provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of the Business and Professions Code.

REGULATIONS

6. California Code of Regulations, title 16, section 1444 defines when a conviction is substantially related to registered nursing:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

1 (a) Assaultive or abusive conduct including, but not limited to, those
2 violations listed in subdivision (d) of Penal Code Section 11160.

3 (b) Failure to comply with any mandatory reporting requirements.

4 (c) Theft, dishonesty, fraud, or deceit.

5 (d) Any conviction or act subject to an order of registration pursuant to
6 Section 290 of the Penal Code.”

7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 **(Conviction of a Crime)**

9 7. Respondent's application is subject to denial under sections 2736 and 480 subdivision
10 (a)(1) in conjunction with Title 16 section 1444 subdivision (c) of the California Code of
11 Regulations because Respondent was convicted of theft, a crime substantially related to the
12 practice of registered nursing.

13 8. On or about February 21, 2007, after pleading guilty, Respondent was convicted of
14 one misdemeanor count of violating Penal Code section 487, subdivision (a) [grand theft by
15 embezzlement] in the criminal proceeding entitled *People v. Morgan Keely Duffner* (Super. Ct.
16 Ventura County, 2006, No. 2006048542 MA). The court fined Respondent and ordered her to pay
17 \$1,300 in restitution to her employer, the victim of her theft.

18 9. The circumstances surrounding the conviction are that on and between October 1,
19 2006 and December 14, 2006, Respondent stole over \$400 in small amounts at a time from her
20 employer, the Water Store, a retailer in Ventura, California.

21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

22 **(Acts Involving Dishonesty, Fraud, or Deceit)**

23 10. Respondent's application is subject to denial under sections 2736 and 480,
24 subdivision (a)(2), in that Respondent repeatedly stole money from her employer, acts involving
25 dishonesty or deceit with the intent to substantially benefit herself, or substantially injure another.

26 11. Paragraphs 7 through 9 are realleged in and incorporated into this cause of discipline.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Knowingly Made a False Statement of Fact)**

3 11. Respondent's application is subject to denial under sections 2736 and 480,
4 subdivision (c), in that Respondent knowingly made a false statement of fact by failing to disclose
5 her 2007 conviction on her licensure application.

6 12. The application asked in relevant part:

7 "Have you ever been convicted of **any** offense other than minor traffic violations? If
8 yes, explain fully as described in the applicant instructions. Convictions must be
9 reported even if they have been adjudicated, dismissed or expunged or if a diversion
program has been completed under the Penal Code or Article 5 of the Vehicle Code."

10 13. Respondent's 2007 conviction had been ordered set aside and vacated pursuant to
11 Penal Code section 1203.4 of the Penal Code on or about April 9, 2008. However, that court
12 order stated in part:

13 "If this order is granted under the provisions of Penal Code section 1203.4, the
14 defendant is required to disclose the above conviction in response to any direct
15 question contained in any questionnaire or application for public office or for
licensure by any state or local agency, or for contracting with the California State
Lottery."

16 14. Paragraphs 7 through 9 are realleged in and incorporated into this cause of discipline.

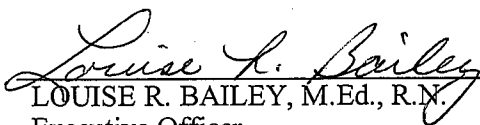
17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board issue a decision:

20 1. Denying the application of Morgan Keely Duffner for licensure as a Registered
21 Nurse; and

22 2. Taking such other and further action as deemed necessary and proper.

23
24 DATED: NOVEMBER 16, 2012


LOUISE R. BAILEY, M.Ed., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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